

Here is an article proving AT&T does not have a spectrum shortage. In desperation to save their T Mobil merger threatened by a Justice Department antitrust lawsuit are pleading with smaller rivals to buy some of their existing spectrum to ease regulatory concerns freeing up AT&T to proceed with the merger. Since smaller carriers have less spectrum and AT&T has been known to be a spectrum hog it would be nice to see the spectrum crunch on smaller carriers reduced. Hope one or two smaller carriers agree to buy the spectrum and it is sold but regulators still deny merger. In examining the broadband marketplace should weigh how AT&T T Mobil merger affects competition, consumer choice and future broadband industry practices.

AT&T to smaller carriers: buy our spectrum (and save our T-Mobil merger)

It appears that AT&T's \$39 billion bid to purchase T-Mobile may have moved into the desperation phase of the transaction. Bloomberg reports that AT&T is now asking MetroPCS and Leap Wireless whether they'd like to buy any of the larger company's spectrum. On top of that, AT&T has reportedly approached CenturyLink, Dish Network, and even arch merger foe Sprint Nextel about possible wireless purchases.

Grain-of-salt alert?this intelligence is all based on "two people with direct knowledge of the situation" who "declined to be identified because the talks are private," Bloomberg says. But if AT&T is indeed making these moves, chances are that they are to some degree responsive to the Department of Justice's August 31 lawsuit against the proposed union. Here's how that logic may be playing out.

Capacity constraints

When AT&T filed its original public interest statement with the Federal Communications Commission in April, one of its principal arguments was that the telco faced a spectrum shortage, and needed T-Mobile licenses to fix the shortfall.

"AT&T is using up its spectrum at an accelerating rate, and the wireless broadband revolution is just beginning," the company wrote. "Over the next five years, data usage on AT&T's network is projected to skyrocket by a factor of eight to ten as customers 'mobilize' all of their communications activities."

Bottom line: "AT&T faces severe capacity constraints and cannot simply wait for the next major auction to resolve them."

The brief also reminded the FCC that, post-merger, the new company would still face "intense competition" from Verizon, Sprint, "industry mavericks" MetroPCS and Leap, and ClearWire and LightSquared. In a way, the T-Mobile purchase would invigorate the competitive environment, AT&T contended, since the smaller company's percentage of US subscribers has been dropping for nearly

two years, "and it has no clear path to LTE."

Entry barriers

But the Department of Justice's lawsuit, first filed on August 31 and amended on September 16, saw the matter very differently. The DoJ clearly views T-Mobile as the maverick in this scenario, particularly when it comes to the budget end of the market:

T-Mobile historically has been particularly aggressive on price. AT&T's acquisition of T-Mobile therefore removes potentially the most attractive bidder from many bid situations. Accordingly, the merged firm likely will have a reduced incentive to submit low bids. In addition, the remaining bidders - typically Verizon and/or Sprint - also may bid less aggressively. For some customers, such as enterprises whose employees travel extensively internationally, AT&T and T-Mobile are particularly close substitutes.

Absent the proposed merger, T-Mobile would likely have an even more important competitive presence in the enterprise and government market going forward. In the past, enterprise and government customers were not a primary focus for T-Mobile. As part of its 2011 business plan, however, T-Mobile re-dedicated itself to becoming a bigger player with the stated goal of growing enterprise revenues substantially by 2013.

This is also the focus of the seven state Attorneys General who have joined the DoJ lawsuit. T-Mobile is a "low-cost provider of choice for millions of New Yorkers," warned New York AG Eric Schneiderman in his antitrust statement. "The proposed merger would remove this key competitor from the market."

And the DoJ complaint doesn't just worry about the wireless broadband landscape without T-Mobile. It frets about the prospects of any smaller player getting or increasing its foothold in the national wireless landscape in a post-merger environment.

Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring spectrum licenses and the construction of a network. To replace the competition that would be lost from AT&T's elimination of T-Mobile as an independent competitor, moreover, a new entrant would need to have nationwide spectrum, a national network, scale economies that arise from having tens of millions of customers, and a strong brand, as well as other valued characteristics. Therefore, entry in response to a small but significant price increase for mobile wireless telecommunications services would not be likely, timely, and sufficient to thwart the competitive harm resulting from AT&T's proposed acquisition of T-Mobile, if it were consummated.

Charitively portrayed

So barring a crude effort to buy smaller carriers off, what we could be witnessing here is a bid by AT&T to off enough of its spectrum to various other players so that the telco can argue that a critical mass of national wireless competitors will still exist following the marriage. It's unclear, however, whether the targets of this possible largesse will see the situation that way, even if they get some licenses out of the deal. Consider the perspective of Leap Wireless, which has filed its opposition to the proposed union with the FCC.

"Even charitably portrayed, the applicants' rhetoric about the potential benefits of this acquisition is greatly overstated," Leap's June 20 opposition filing warned. "They describe and predict 'vibrant' post-acquisition competition, yet point to carriers that are a tiny fraction of their size. The combined subscribership of MetroPCS, Leap, U.S. Cellular, Cincinnati Bell, and Cellular South would be less than 1/6th the size of post-merger AT&T, and indeed their combined subscribership today remains far smaller than that of T-Mobile alone."

And none of this is likely to mollify Sprint, whose own lawsuit outlines its primary fear in great detail: that an AT&T/T-Mobile merger would allow the new entity to cut exclusive handset deals lethal to the smaller carrier. "And even if Sprint eventually were able to obtain access to new devices, there likely would be substantial delays during which time AT&T and Verizon would be able to obtain a significant competitive advantage."

On the other hand, a low-priced spectrum sale might be attractive to other smaller telcos. Sprint notes that because AT&T's spectrum holdings "are predominantly in the developed bands for which network equipment, chipsets, and device antennae are readily available," the costs of developing spectrum on "new" bands would be shifted to Sprint and other carriers. Perhaps some of them might like to avoid that shift by purchasing an AT&T license or two.

In any event, Sprint tells us that on Friday the company asked a Federal Court to hear its complaint in a coordinated proceeding with the Department of Justice's action. The DoJ has asked for a trial on March 19, 2012. AT&T wants it sooner? on January 16. Judge Ellen S. Huvelle of the United States District Court for the District Columbia will hear the matter on Wednesday.

"We will be in Court on Wednesday for the judge's scheduling conference with DOJ and AT&T," a Sprint spokesperson told us. "At this point, we don't know what she will rule or when she would rule, but in our motion from Friday, it's pretty clear that AT&T intends to file a motion to dismiss our suit."

Sincerely,

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